

Federal Communications Commission

DA 03-1935

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 02-56
Table of Allotments,)	RM-10391
FM Broadcast Stations.)	RM-10581*
(DeRidder, De Quincy, and Merryville,)	
Louisiana and Newton, Texas))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 18, 2003

Released: June 20, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued in response to a petition for rule making originally filed by West Central Broadcasting Co., Inc., the former licensee of Station KNUF, Channel 221C3, DeRidder, Louisiana. Initially, the former licensee proposed to reallocate Channel 221C3 from DeRidder to Merryville, Louisiana (RM-10391) as Merryville's first local aural transmission service. Subsequently, Apex Broadcasting, Inc. ("Apex Broadcasting"), the current licensee of Station KNUF, filed a timely counterproposal² requesting the reallocation of Channel 221C3 to DeQuincy, Louisiana, rather than Merryville, Louisiana, as DeQuincy's first local aural transmission service. Apex Broadcasting also proposed the allotment of Channel 224A to Newton, Texas, as Newton's first local service.

2. In *Taccoa, Georgia, et al.*,³ we announced that a petitioner for rule making that files a counterproposal to its own proposal must provide an explanation as to why its counterproposal could not have been set forth in its original petition for rulemaking. In the absence of such an explanation, such as unforeseen circumstances, the Commission reserves the right to process the new proposal in a new proceeding. In regard to its counterproposal, Apex Broadcasting states that the circumstances have changed since its predecessor filed the initial petition for rule making to relocate Station KNUF from DeRidder to Merryville, Louisiana. Specifically, Apex Broadcasting notes that on May 3, 2002, Radio Maria, Inc., the licensee of FM Station KOJO, Channel 219A, Lake Charles, Louisiana, withdrew its application for an upgrade to Channel 219C2 (File No. BPED-19970624ML). As a result of that withdrawal, Apex Broadcasting was then able to file its timely counterproposal on May 6, 2002, proposing a change in community of license to DeQuincy, Louisiana, instead of Merryville. This counterproposal would result in the larger community of DeQuincy (with a 2000 U.S. Census population of 3,398 persons compared to the population of Merryville, which has a 2000 U.S. Census population of 1,126 persons) receiving a first local service. In view of the fact that the DeQuincy reallocation proposal would have been originally precluded by the Radio Maria, Inc. application, we

¹ *DeRidder and Merryville, Louisiana*, 17 FCC Red 4656 (M.M.Bur. 2002).

² The Commission issued a *Public Notice*, Report No. 2577, dated September 25, 2002, in which it announced this counterproposal and gave it the rulemaking number of RM-10581*.

³ 16 FCC Red 21191 (M.M.Bur. 2001).

find that consideration of this proposal is consistent with *Taccoa, Georgia, et al.* We will now consider the Apex Broadcasting counterproposal.

3. Apex Broadcasting filed its request to move Station KNUF, Channel 221C3, to DeQuincy, Louisiana, pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.⁴ We grant the Apex Broadcasting counterproposal to reallocate Channel 221C3 from DeRidder to DeQuincy and we modify the license of Station KNUF in accordance with this reallocation. Apex Broadcasting's proposal to reallocate Station KNUF, Channel 221C3, from DeRidder to DeQuincy meets our spacing requirements and would also provide the entire community of DeQuincy with the required 70 dBu city-grade service contour. The entire loss area, except for an area of 1.6 square kilometers with no population,⁵ would receive five or more aural services. We believe that the public interest would be served by reallocating Channel 221C3 from DeRidder to DeQuincy because DeQuincy would receive its first local aural transmission service. The reallocation of Channel 221C3 to DeQuincy would not deprive DeRidder of its sole local aural transmission outlet, because DeRidder would continue to be served by three local radio stations. DeQuincy is an incorporated city. Apex Broadcasting states that DeQuincy is governed by a mayor, four district council members and one at-large member, has a wide variety of businesses, its own post office, fire and police departments, airport, housing authority, several churches and civic associations, and provides various services to its citizens, including local planning and zoning, road maintenance, and animal control. Accordingly, DeQuincy qualifies as a "community" to which an FM channel can be assigned pursuant to Section 307(b) of the Communications Act of 1934, as amended. In light of the foregoing facts and circumstances, we grant Petitioner's request to move Station KNUF from DeRidder to DeQuincy, Louisiana.

4. Staff engineering studies reveal that Apex Broadcasting's proposal to provide new service to Newton, Texas, would not provide the required 70 dBu city-grade contour service to the entire community of Newton, Louisiana. Therefore, we cannot allocate Channel 224A to Newton, Texas. This fact is not fatal to the Apex Broadcasting counterproposal, because Apex Broadcasting's change of community from DeRidder to DeQuincy would not result in any populated loss area receiving less than five aural services. Since Apex Broadcasting's proposal to provide DeQuincy with a first local service is distinct and independent from its proposal to serve Newton, we believe that the proposal to reallocate Channel 221C3 to DeQuincy should be granted, even though we reject the Newton proposal.⁶

5. Channel 221C3 can be allocated to DeQuincy, Louisiana, in conformity with the technical requirements of the Commission's Rules, utilizing Petitioner's requested site at the coordinates of 30-26-54 North Latitude and 93-26-37 West Longitude, with a site restriction of 1.04 kilometers (0.64 miles) west of DeQuincy, Louisiana.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 4, 2003, the FM Table of Allotments,

⁴ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon.* granted in part, 5 FCC Rcd 7094 (1990).

⁵ That area of 1.6 square kilometers would receive four aural services.

⁶ See *Casper, Wyoming, et al.*, 15 FCC Rcd 15806 (M.M.Bur. 2000).

Section 73.202(b) of the Commission's Rules. IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
DeRidder, Louisiana	250C2
DeQuincy, Louisiana	221C3

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Apex Broadcasting, Inc. for Station KNUF, DeRidder, Louisiana, IS MODIFIED to specify operation on Channel 221C3 at DeQuincy, Louisiana, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Apex Broadcasting, Inc., licensee of Station KNUF, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

9. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

10. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau